In his affidavit the defendant repeated what he had said in his statement of defence.

The above points were urged before Gill J. and he held that since the administrators were appointed by the court on 27th January 1955 and the grant of letters of administration was extracted on 1st June 1955, he therefore held that Junid bin Amin could not possibly have been the agent of the administrators long before the administrators acquired the status as such. In reference to Junid bin Amin being one of the sons of the deceased, the learned judge held that that fact could not give him any authority to deal with any property belonging to the estate. He apparently accepted the evidence of Mohamed Isa bin Mohamed Amin, one of the administrators to the effect that neither he nor his co-administrator held out at any time the said Junid to be their agent either expressly or impliedly.

The learned judge then went on to say that if the administrators did nothing to oust the defendant from the land, the highest that could be said in his favour is that he was a bare licensee and such licence had come to an end when the successors in title to the administrators i.e. the present plaintiffs gave notice to quit. He therefore was of the view that there was no triable issue. As to the question of silence on the part of the administrators, the learned judge held that that alone does not or did not constitute estoppel as there was no duty to speak. In all the circumstances he gave leave to the plaintiffs to sign final judgment in terms of the statement of claim.

One of the substantial questions which has to be decided in the suit is whether Junid had any authority from the beneficiaries of the deceased Jamiah or the administrators of her estate to permit the defendant to build the houses on the land and this involves a substantial question of fact and law particularly in view of the fact that Mohamed Isa bin Mohamed Amin and the other administrator had done nothing in reference to the construction of these houses on the land even though they had been appointed adminstrators since 1955.

For the above reason alone, in my view, the defendant should be given leave to defend.

Barakbah L.P. and **Raja Azlan Shah J.** concurred.

Appeal allowed.

Solicitors: *Heng Chen & Co.; Shook Lin & Bok.*

CHEW SEOK TEE v. LIM KER & ANOR.

[A.C.J. (Yong J.) January 15, 1967]

[Alor Star — Civil Appeal No. 7 of 1965]

Practice and Procedure — Trial — Judge calling and examining witness on his own — Demeanour of witness — Practice undesirable.

Bills of Sale — Personal chattel — Goods — Bills of Sale Ordinance, 1950, ss. 2, 3 & 10(2).

This was an appeal against the judgment of the learned president who dismissed the objection of the appellant to the attachment of a house in execution of a decree obtained by the plaintiff-respondent. The appellant had claimed that the house was hers. She gave evidence and called witnesses in support of her claim. The respondent did not give evidence or call any witnesses. The learned president then took upon himself the task of procuring further evidence for the parties. After he had examined a witness and cross-examined another witness he dismissed the objection of the appellant. The learned president also held that the document of sale was void as it was not attested and registered as required by section 10(2) of the Bills of Sale Ordinance.

Held: (1) the practice adopted by the learned president was undesirable as it might lead to a miscarriage of justice;

(2) in this case on the facts the learned president should have accepted the evidence of the appellant, which was not contradicted by the respondent, and held that the appellant was the owner of the house;

(3) a house or building with chattel interest in real estate is not a "personal chattel" or "goods" and section 10(2) of the Ordinance did not apply.

Cases referred to:—

(1) *Yuill* v. *Yuill* [1945] P. 15.

(2) *Jones* v. *National Coal Board* [1957] 2 W.L.R. 760.

CIVIL APPEAL.

Oo Gin Sun for the appellant.

Lim Huck Aik for the respondent.

Yong J.: This is an appeal by the above-named objector-appellant who objected to her house No. 7B, Kampong Bahru, Lunas (hereinafter called "the said house") being attached in execution of a decree obtained by the plaintiff-respondent against the defendant in Sungei Patani Sessions Court Civil Action No. 22 of 1963, on the ground that she is the owner of the said house.

She gave evidence that she had purchased the said house on 25th June 1962 from the defendant who gave her a document of sale (P-1). On the next day (26th June 1962) she submitted P-1 to the chairman of the Lunas Local Council together with an application for transfer (P-2) duly signed by the vendor (defendant) applying for the transfer of the said house to her. She paid to the Lunas Local Council a transfer fee of $1 for which the council issued a Government printed receipt (P-4) numbered B. No. 485012 and dated 26th June 1962. On 27th June 1962 the said application was approved and such approval was duly endorsed on P-2.

Such approval was necessary because the transfer of the house or building would involve the transfer to her of the possession and use of the land on which it was built as authorised by the Lunas Local Council, and the liability to pay the rates and assessments thereof to the local council.

Amir Hamzah bin Mohamed Zain (P.W.2), the clerk of the Lunas Local Council produced to the court the said document of sale (P-1) and the application for transfer (P-2) and testified that as from 25th June 1962 the objector-appellant has been the owner of the said premises No. 7B, Kampong Bahru, and has been paying its rates and assessments. If they were in arrears, the council would summon her for payment.

After his evidence, the objector-appellant closed her case. The plaintiff-respondent did not give evidence and did not call any witness.

The learned president however took upon himself the task of procuring further evidence for the parties. He himself called and examined one Mohamed Bakhtin bin Haji Salleh at length, and recalled another witness (P.W.2) into the witness box for further cross-examination. Such a practice is highly undesirable and may lead to a miscarriage of justice. The learned president should sit to hear and determine the issues raised by the parties, and not conduct any investigation or examination of the witnesses himself. Justice is best done by him by holding "the balance between the contending parties without himself taking part in their disputations."

In *Yuill* v. *Yuill* [1] Lord Greene commented that if a judge should himself conduct the examination of witnesses, "he, so to speak, descends into the arena and is liable to have his visions clouded by the dust of conflict."

In *Jones* v. *National Coal Board* [2] Denning L.J. said:—

> "So firmly is all this established in our law that the judge is not allowed in a civil dispute to call a witness whom he thinks might throw some light on the facts. He must rest content with the witnesses called by the parties. So also it is for the advocates, each in his turn to examine the witnesses, and not for the judge to take it on himself, lest by so doing he appear to favour one side or the other."

There are also other unsatisfactory features in the trial. After having recalled the clerk of the council (P.W.2) into the witness box and severely cross-examined him, and upon the answers given (given perhaps under distress and embarrassment when a superior officer like a president of the sessions court was taking a leading role in his cross-examination) the learned president held that P.W.2 had contradicted himself, and made adverse comments on the demeanour of the witnesses.

In *Yuill* v. *Yuill* [1] Lord Greene M.R. said:—

> "That case shows how important it is that the judge's impression on the subject of demeanour should be carefully checked by a critical examination of the whole of the evidence. If there the trial judge had done this, as it was done in the House of Lords, he could not have expressed the opinion which he did as to the demeanour of the witnesses."

In the present case, the learned president could not have subjected the evidence to an adequate scrutiny before expressing his views on the witnesses.

The learned president's attention was not drawn to the date (25th June 1962), stamped by the Government Stamp Office on the document of sale (P-1) nor was his attention drawn to the approval of the transfer by the Lunas Local Council endorsed on the application for transfer (P-2) on 27th June 1962 and the date on the Government printed official receipt (P-4), proving beyond any doubt that the defendant had sold the said house to the objector-appellant nearly two years before the plaintiff-respondent had obtained a decree against the defendant. In consequence the learned president found it necessary to attack the evidence of the clerk of the council who had through his negligence failed to record in time the said transfer in the books of the Lunas Local Council.

What better proof could any court have that the objector-appellant is the owner of the said house than that document of sale duly executed by the vendor and properly stamped by the Government stamp office, and whose genuineness was not in any way impeached or impugned by the plaintiff's counsel. In addition it was supported by the approval of the said council endorsed on P-2 as early as 27th June 1962 and by the Government printed receipt P-4. The plaintiff-respondent has not adduced any evidence to prove the contrary.

On the question of possession, the objector-appellant said that her daughter lived in the said house and at times she also lived there. Her evidence was not contradicted. In fact it was supported by the plaintiff-respondent's statement of claim and the order for substituted service made by the learned president which showed that the defendant did not live at the said house.

The learned president dismissed her objection on the further ground that her document of sale (P-1) (wrongly described as "bill of sale") was void because it was not attested and registered, as required by section 10(2) of the Bills of Sale Ordinance 1950. The learned president was misled into this belief by counsel, who referred him to section 10(2), without referring him to sections 2 and 3 of the said Ordinance. A house or building with chattel interest in real estate is clearly not a "personal chattel" or "goods" and section 10(2) therefore does not apply. The document of sale (P-1) is therefore not void.

If the attention of the learned president had been drawn to these salient facts, he would not have come to the decision as he did, and this appeal would not have been necessary. Under the circumstances, the appeal is allowed but with no order as to costs. House No. 7B Kampong Bahru, Lunas, is hereby declared to be the property of the objector-appellant and not liable to attachment in execution of a decree obtained against the defendant.

Appeal allowed.

Solicitors: *Oo Gin Sun; Lim Huck Aik & Co.*

PUBLIC PROSECUTOR v. MUNUSAMY

[A.Cr.J. (Chang Min Tat J.) January 16, 1967]

[Ipoh — Criminal Appeal No. 74 of 1966]

Criminal Law and Procedure — Charge under repealed rules — Retrial order — Criminal Procedure Code (Cap. 6), s. 399.

Constitutional Law — Citizenship — Citizenship by naturalisation — Good character — Declaration that applicant has not been convicted or arrested or detained — False declaration — Previous convictions — Proof — Citizenship Rules 1964 — Constitution of Malaysia, art. 19(1).

The respondent had applied for citizenship by naturalisation and in his application he made a declaration that he had not been convicted or found guilty by any court of a criminal offence. In fact he had a number of previous convictions. He was charged with making a false declaration. The learned magistrate acquitted the respondent as he was not satisfied that the contents of the declaration had been fully interpreted to the respondent. He also held that the proof of the previous convictions of the respondent had not been properly adduced.

Held: (1) it was sufficient for the prosecution in this case to prove that a declaration had been made and that the particulars in such declaration were untrue or incorrect;

(2) as a copy of the list of previous convictions had been supplied to the magistrate, the report of the previous convictions was properly admitted in evidence;

(3) for the above reasons the acquittal and discharge could not stand and therefore a retrial ordered.

Cases referred to:—

(1) *Public Prosecutor* v. *Yong Nam Seng & Anor.* [1964] M.L.J. 85.

(2) *Mohamed Abdullah* v. *Public Prosecutor* [1965] 2 M.L.J. 260.

(3) *Chong Peng* v. *Public Prosecutor* [1954] M.L.J. 39.

(4) *Public Prosecutor* v. *Ng Fah* [1954] M.L.J. 150 C.A.

(5) *Laha* v. *Emperor* (1909), I.L.R. 36 Cal. 808, 814.

MAGISTRATE'S CRIMINAL APPEAL.

Idris bin Yusof (Deputy Public Prosecutor) for the appellant.

Yeoh Kean Hua for the respondent.

Chang Min Tat J.: The respondent to this appeal was charged at the Ipoh magistrate's court on the 20th October, 1966, with the following charge:—

"That you on 22nd December 1965 at the Registration Office, Ipoh, in the District of Kinta, in the State of Perak, did make a false declaration with a view to inducing the Registrar of Citizens, Perak, to grant a citizenship certificate, to wit, in your application for registration as citizen under the Citizenship Rules 1960, you declared yourself to be of good character, whereas in fact you were a convicted person and had not received a free pardon and that you thereby committed an offence punishable under section 16 of the Second Schedule to the Federation of Malaya Constitution, 1957."

At the close of the case for the prosecution, he was acquitted and discharged without his defence being called. Against that acquittal and discharge, the public prosecutor has now appealed.

I shall deal with the substantive appeal at a later stage, and propose to deal now with the charge for reasons which will appear obvious.

It is clear from the wording of the charge that though the offence was alleged to have been committed on the 22nd December, 1965, the charge was preferred under the Citizenship Rules, 1960, and that the substance of the charge was that the respondent had made a false declaration by representing himself to be a man of good character when he, in fact, was a convicted person who had not received a free pardon.

In support of this allegation, the prosecution introduced in evidence a certificate from the Registrar of Criminals, Malaya and Singapore, which listed particulars of 5 convictions, all in respect of property, the latest of which was dated 14th October, 1959. Not one of these offences was punished with a term of imprisonment extending beyond 9 months. There was no allegation that the respondent was ever sentenced to death.

A reference to the Citizenship Rules, 1960, (published under L.N. 310 of 1960) reveals two surprising factors.

In the first place, the Rules contained forms of application which, of course, formed part of the Rules and in these forms, the applicant was required to declare (i) that in the event of a certificate being granted to him, he intended to reside permanently in the Federation, (ii) that he was of good character and had an elementary knowledge of the Malay language, and (iii) that he was prepared to take the oath of allegiance, and a further declaration that the particulars were true to his knowledge and belief. An asterisk was printed after the words "good character," by way of reference to what must be regarded as a statutory definition of good character appearing as a footnote in the application forms. The definition is in the following words:—

"For the purpose of any application for registration